

The Examiner first rejects claim 3, 24, 26, 36 and 47 under 35 U.S.C. 102 as being anticipated by Spanish Utility Model 289561 to Iriarte. The Examiner argues that the adhesive which binds together elastic strip 1 and body 2 of the Iriarte reference dilator, and bonds body 2 of that dilator to the user's nose during use, faces both toward and away from the user's face during use of the dilator. However, the applicant above has again amended claim 3 to make clearer that some orientation of the adhesive substance on the resilient member is not at all what is being set forth in the claim. Instead, this amendment is directed toward having the claim more clearly set forth the orientation, or direction of facing, of at least part of the surface of the resilient member that has this adhesive substance on it. Thus, claim 3 recites, after the above amendment, that the resilient member has an adherence surface with an adhesive substance thereon, and that it is this surface which faces at least in part the same way as the first and second end region surfaces face so as to allow the adhesives at those end regions to be available to engage the outer wall tissues of a user's nose.

Such an arrangement is not found in the Iriarte reference dilator which has the particular surface of elastic strip 1 therein which faces directions faced by the end regions of that dilator (in having the adhesive of that dilator being available to engage the user's outer nasal wall tissues) being free of any adhesive on it. Thus, the applicant respectfully submits that claim 3 is clearly allowable over the Iriarte reference. Then, claims 24 and 26, in depending on claim 3, are also allowable. In addition, claim 26 recites a separating material between the remainder of the truss (thus including the resilient member) and the user's nose which is in no way suggested in the Iriarte reference.

The Examiner also argues, with respect to claims 36 and 47, that the adhesive binding elastic strip 1 to body 2 of the Iriarte reference dilator, and also adhering the dilator to the nose of a user, is an adhesive again facing both toward and away from the user's face during use so that this dilator is within the scope of these claims. Those claims, too, have been amended to make clearer that there is an adherence surface of the resilient member which has an adhesive thereon and that this adherence surface faces in directions at least in part faced by the end surfaces of the truss. The end surfaces are further recited to have an engagement means which allows them to engage exposed

surfaces of the outer wall tissues of a user's nose. Thus, the adherence surface of the resilient member with adhesive thereon must also face the user's nose during use. Hence, these claims are also allowable over the Iriarte reference which has no adhesive on the surface of the elastic strip 1 thereof facing the user's nose when a dilator of Figure 2 therein has been mounted on that nose based on the adhesive on body 2 of that dilator.

The Examiner goes on to reject claims 32 through 34, 37, 38, 45, 46 and 48 under 35 U.S.C. 103 as being obvious in the face of the Spanish reference. Claim 32 has been amended so that it, like claims 36 and 47, has a resilient member with an adherence surface having adhesive thereon and has this adherence surface facing in directions at least in part faced by the dilator end surfaces, these end surfaces again having an engagement means that is capable of engaging them to the outer wall tissues of a user's nose. Here, too, these claims are allowable over the Iriarte reference which again has no adhesive on the surface of the elastic strip 1 thereof facing the user's nose of a dilator mounted on that nose through use of the adhesive on body 2 of that dilator. Claims 33, 34 and 35 depend on claim 32 and are also then allowable.

Furthermore, claims 34 and 37, in requiring plural resilient members in the truss, can not be merely replicates of elastic strip 1 of the Iriarte reference dilator. They must each instead be much narrower than elastic strip 1 of the Iriarte reference dilator while still providing adequate outward resiliently generated force so that they allow substantial space between them to thereby accommodate lateral movements of the nose during the user's nose wrinkleings that occur during use to reduce or avoid the stress in the nasal tissues that would otherwise occur. There is not enough room across body 2 of the Iriarte reference dilator to accommodate two side-by-side elastic strips 1 thereunder as such a pair, even with their edges in contact with one another, as the width of such a pair would extend well beyond the sides of that body as opposed to being capable of allowing a space between them while contained within the outlines of that body in the way elastic strip 1 is contained within the breadth of body 2.

First Named Inventor: Bruce C. Johnson

Application No.: 08/874,781

-7-

The Examiner lastly rejects claim 25 under 35 U.S.C. 102 as being anticipated by the Iriarte reference. Claim 25, depending on claim 3, is allowable as this latter claim is allowable as shown above.

The applicant has not rewritten claim 35 in independent form in this response because the claim on which it depends has been demonstrated above to be allowable. The rewriting of this claim in independent form will be done in the future if appropriate.

The Commissioner is authorized to charge any additional fee required under 37 C.F.R. 1.16 and 1.17 and credit any overpayments to Deposit Account No. 11-0982.

Any inquiries regarding this application should be directed to Theodore F. Neils at (612) 339-1863.

Respectfully submitted,

KINNEY & LANGE, P.A.

Date:

4/20/01

By



Theodore F. Neils, Reg. No. 26,316

THE KINNEY & LANGE BUILDING
312 South Third Street

Minneapolis, MN 55415-1002

Telephone: (612) 339-1863

Fax: (612) 339-6580

TFN:nab



**APPENDIX:
MARKED CHANGES VERSION OF SPECIFICATION AND CLAIM AMENDMENTS**

3. (Six Times Amended) A nasal dilator for preventing outer wall tissue of nasal passages of a user's nose from drawing in during breathing, comprising:

 a flexible truss member having an initial state absent flexure thereof, the truss member including:

 a first end region with an end region surface having an adhesive thereat so as to be adapted to adhesively engage the outer wall tissue of a first nasal passage;

 a second end region with an end region surface having an adhesive thereat so as to be adapted to adhesively engage the outer wall tissues of a second nasal passage;

 an intermediate segment configured to traverse a portion of the user's nose located between the first and second nasal passages; and

 a resilient member having an adhesive substance thereon, the resilient member having an adherence surface and being included in at least a portion of the first and second end regions and the intermediate segment, [which] the resilient member [is capable, at least in part, of resilient deformation that, through] having the adhesive substance thereon being on [a] the adherence surface thereof [oriented] which adherence surface faces at least in part the same way as [are] do said first and second end [regions] region surfaces to thereby have said adhesives thereat available to engage the outer wall tissues, the resilient member being capable, at least in part, of resilient deformation that tends to cause the first and second end regions to separate from one another after being urged toward one another to give the truss member a tendency to return to its initial state when flexed to thereby act to stabilize the outer wall tissue if engaged therewith and so prevent the outer wall [tissue] tissues of the first and second nasal passages from drawing in during breathing [while allowing the truss member to conform to the outer wall tissue of the nasal passages of a user's nose], the truss member including

APPENDIX:
MARKED CHANGES VERSION OF SPECIFICATION AND CLAIM AMENDMENTS

an adhesive void and configured to extend about a user's nose such that the intermediate segment traverses an exterior region of the bridge of a nose with the adhesive void located between the truss member and the bridge.

32. (Five Times Amended) A nasal dilator capable of introducing separating stresses in outer wall tissues of a user's nose, said dilator comprising:

a truss having a resilient member and adhesive therein and having a pair of spaced apart end surfaces with an intermediate segment therebetween such that forcing said end surfaces toward one another from initial positions to substantially reduce direct spacing therebetween by a spacing reduction force external to said truss results in restoring forces in said truss tending to restore said direct spacing between said end surfaces, said resilient member [being in contact] having an adherence surface with adhesive [at a] on that adherence surface thereof[which], said adherence surface [faces] directions at least in part that are faced by said end surfaces of said truss; and engagement means adhered to said end surfaces and capable of sufficiently engaging exposed surfaces of such outer wall tissues adjacent thereto faced by said end surfaces to remain so engaged against said restoring forces and to hold said truss substantially conformed about said outer wall tissues but without at least a substantial portion of said intermediate segment being so engaged with said outer wall tissues adjacent thereto when concurrently in contact therewith.

36. (Six Times Amended) A nasal dilator capable of introducing separating stresses in outer wall tissues of a user's nose, said dilator comprising:

a truss having both a flexible strip of material and a resilient member adhered therein, and further having a pair of spaced apart end surfaces with an intermediate segment therebetween such that forcing said end surfaces toward one another from initial positions to substantially reduce direct spacing therebetween by a spacing reduction

APPENDIX:
MARKED CHANGES VERSION OF SPECIFICATION AND CLAIM AMENDMENTS

force external to said truss results in restoring forces in said truss tending to restore said direct spacing between said end surfaces, said resilient member [being in contact] having an adherence surface with an adhesive [at a] on that adherence surface thereof [which], said adherence surface [faces] facing directions at least in part that are faced by said end surfaces of said truss [to thereby be] as adhered therein [to said flexible strip of material also in contact with said adhesive]; and engagement means adhered to said end surfaces and capable of sufficiently engaging exposed surfaces of such outer wall tissues faced by said end surfaces to remain so engaged against said restoring forces.

47. (Thrice Amended) A nasal dilator capable of introducing separating stresses in outer wall tissues of a user's nose, said dilator comprising:

a truss having both a flexible strip of material and a resilient member therein, and further having a pair of spaced apart end surfaces such that forcing said end surfaces toward one another from initial positions to substantially reduce direct spacing therebetween by a spacing reduction force external to said truss results in restoring forces in said truss tending to restore said direct spacing between said end surfaces, said resilient member and said flexible strip of material each [being in contact] having an adherence surface and with an adhesive [at a] on that adherence surface thereof [which], said adherence surfaces [faces] both facing directions at least in part that are faced by said end surfaces; and

engagement means adhered to said end surfaces and capable of sufficiently engaging exposed surfaces of such outer wall tissues faced by said end surfaces to remain so engaged against said restoring forces including having any portions of said flexible strip of material positioned against these outer wall tissues as a result of such engaging thereof being directly adhered to those outer wall tissues.